

**Resolved: For-profit prisons in the United States should be banned.**

**By Keith West**

America leads the world in many things, and we have a lot to be proud of. One of the areas we lead in that's not so inspiring is incarceration. Nearly one out of 100 people in the United States is in prison right now, and we're having trouble building enough prisons and paying enough people to guard them all. In the last few decades we've turned to using private companies to run some of our prisons. These for-profit prisons (commonly called "private prisons") promise to save money and let us incarcerate people more efficiently, but opponents are skeptical of their motives and methods. With our prison population in the millions it's an issue we'll need to tackle eventually, and this topic analysis will do so by looking at the background of private prisons, analysing the resolution, and providing some arguments debaters should be prepared to encounter.

**Background**

Private prisons have existed in various forms in the United States since the 1800's, though they largely vanished from the 1920's to the 1980's. With the advent of the War on Drugs and the massive increase in incarceration that resulted, private prisons in their current form began to emerge. Over the last three decades the number of inmates incarcerated in private prisons has increased fairly steadily, and as of 2013 133,000 inmates were incarcerated in for-profit facilities (approximately 7%

of the total prison population in the US)<sup>1</sup>. Private prisons exist at both the State and Federal level and operate at minimum, medium and maximum security level - though minimum security private prisons appear to be the most common.<sup>2</sup>

Private prison companies contract with state governments in a variety of ways. In most cases they obtain a contract with the state to build and operate a facility to hold prisoners. In some cases they offer to purchase existing public prisons and take over management of them. The government tends to pay the prison a certain amount per inmate the prison houses, and many contracts include provisions that guarantee that the state will send the private prison enough inmates to fill 80%-100% of the prison's capacity.<sup>3</sup> Private prison companies claim that they can do the job of housing inmates more cost effectively than the public sector, and often secure contracts with states by agreeing to be paid less per inmate than the state is currently spending to house those inmates in public facilities. Private prison companies claim that they are able to run more cost-effective operations than public prisons because they are better able to identify and cut wasteful spending. They also argue that the drive to compete with other companies and public prisons forces everyone to perform more effectively. Evidence on the potential cost savings from private prisons is mixed, and will be discussed in more depth later. Once a prison company has obtained a contract and built their prison, it then decides how to staff and run the prison in order to meet basic requirements for the inmates and prevent escape.

Inmates in private prisons have essentially the same rights as they do in public prisons, though private prisons are better protected against lawsuits<sup>4</sup>. There is some concern that there are

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<sup>1</sup> <http://www.bjs.gov/content/pub/pdf/p13.pdf>

<sup>2</sup> *ibid*

<sup>3</sup> <http://www.inthepublicinterest.org/sites/default/files/Criminal-Lockup%20Quota-Report.pdf>

<sup>4</sup> [http://www2.bloomberglaw.com/public/mobile/document/MINNECI v POLLARD 101104 No 101104 2011 BL 331100 US Nov 01 2011](http://www2.bloomberglaw.com/public/mobile/document/MINNECI_v_POLLARD_101104_No_101104_2011_BL_331100_US_Nov_01_2011)



resulting in massive levels of overcrowding (California is a particularly relevant example here)<sup>1112</sup>.

In the midst of this chaos private prison companies have offered to not only build new prisons quickly, but to run them for less money than the state would usually have to spend. Many states that have agreements with private prisons specify in those agreements that the prison company will only be paid a percentage of what it would cost the state to house inmates in the public prison system (often 85% or 90% of the cost) in order to guarantee a net saving for the state. Since government spending is fairly finite, this saving can enable states to spend more money on education, social welfare and other essential government programs.

### **Resolutional Analysis**

There are two key terms which will shape the contours of this debate - we'll examine each of them in turn.

#### **“For-Profit Prisons”**

Simply put, this term refers to prisons run by private companies as a business that seeks to turn a profit. A more wordy definition might be: correctional institutions that incarcerate individuals convicted of a crime (or awaiting trial) which are operated by a company or individual that seeks to make a profit, rather than by a government entity or non-profit group. In the literature these are most often referred to as “private prisons,” and that’s the term I’ll continue to use here.

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<sup>11</sup><http://www.washingtonpost.com/blogs/govbeat/wp/2014/02/11/california-gets-two-more-years-to-solve-prison-overcrowding/>

<sup>12</sup> <http://gov.ca.gov/news.php?id=4278>

There is robust debate about privatizing a number of different public services (everything from social security to healthcare to national parks), and this debate will have many of the same themes as those. The underlying argument in favor of privatization is that the competition provided by multiple companies all trying to get a limited amount of business will prompt them all to do a better job. This position contends that it is bad to give the government a functional monopoly on something (like housing prisoners) because then they can do a poor job and no one will be pushing them to do better. Opponents of privatization claim that the profit motive tends to encourage companies to cut corners and focus on making more money, rather than providing the best quality service they can. A government agency has the welfare of its citizens as it's top priority, where a private corporation has profit as it's primary motivation, and that makes it less likely citizens will get the kind of service they deserve. This debate will largely take place along these same general lines, but with a number of issues specific to the prison sector.

### “Banned”

This one word is going to be absolutely critical to most successful Con strategies. While there are some arguments the Con can make about cost savings and such, they tend to be pretty hard to weigh against the Pro arguments that private prisons have higher incidents of abuse and less success at rehabilitation than public ones. That's where the implications of a Ban becomes critical. Fundamentally the Con's job is negate the resolution - in this case they need to advocate that private prisons not be banned - but that's not necessarily the same thing as arguing for the status quo. Here we get into some potentially very murky territory for PF, since this form of debate doesn't permit “plans” or “counterplans” per se. The NSDA defines a plan or counterplan as “a formalized

comprehensive proposal for implementation”<sup>13</sup>. There’s enough ambiguity in what that means that I expect a significant number of Con teams to argue that we shouldn’t ban private prisons, we should **reform** them.

Since a ban requires us to prohibit something entirely it would seem to be mutually exclusive with any attempt to reform that thing and permit it to remain in some way. If you think about it, we have these kinds of debates in the public sphere all the time, and it only seems reasonable that public forum debate should host them as well. I expect a number of Con teams to argue that - while the current system is not ideal - it is possible to reform the system to preserve the benefits of private involvement while preventing abuses. If teams are able to provide a specific example of such a reform it could be a compelling reason for a judge to vote to keep private prisons around and support the Con.

This approach is not likely to be well received in all areas or by all judges. I expect there to be some rather engaging debates in-round about what constitutes a “plan” and whether this is permissible in Public Forum. By placing the Con in the incredibly difficult position of defending a painfully flawed status quo, this topic is likely to force the issue of plans/counterplans to take center stage and invite a larger debate within the PF community as to what those terms mean and what role we want them to play in our form of debate.

### **Potential Arguments**

This section includes a brief overview of several arguments each side could make on this topic. This is by no means an exhaustive list. Debaters are highly encouraged to create their own arguments and/or develop more nuanced versions of these arguments. This section is mainly

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<sup>13</sup> <http://www.speechanddebate.org/forms> (Judge Overview: Public Forum)

intended to give debaters a starting point and an idea of some of the arguments they should be prepared to confront.

## **PRO**

Pro teams are likely to focus on both philosophical and pragmatic arguments. From a philosophical perspective there is a fundamental conflict of interest inherent in running a private prison. Since the prison company is paid based on the number of prisoners it houses, the profit motive model requires that prisoners stay in the prison as long as possible, and/or that new prisoners consistently enter the system. After all, if there aren't enough prisoners in the state to fill your facility your revenues decline and your business collapses. This means that private prisons have an incentive NOT to rehabilitate criminals, because criminals that are successfully rehabilitated wouldn't be committing future crimes and prisoner re-offence (known as recidivism) provides a consistent stream of inmates that the prison can be paid to house. This is supported by studies that suggest the recidivism rates among prisoners from private prisons is significantly higher than public prisons<sup>14</sup>. The fundamental purpose of a prison is to correct bad behavior, the fact that we call our prison department the "Department of Corrections" should tell you something about its primary purpose. The profit motive and the fact that private prisons benefit financially from the existence of more criminals (as well as return criminals) are directly opposed to the mission of correction and rehabilitation that should be at the core of our prison system.

This problem is further exacerbated by the fact that many of the staff at private prisons own stock in the prison companies<sup>15</sup>. This includes guards and administrators - the very people who

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<sup>14</sup> <http://cjr.sagepub.com/content/38/3/375.abstract>

<sup>15</sup> <https://www.prisonlegalnews.org/news/2009/dec/15/kicking-the-national-habit-the-legal-and-policy-arguments-for-abolishing-private-prison-contracts/>

decide whether a prisoner is eligible for “good time” programs (education, therapy, and community service programs that count toward reductions in sentencing times). These people have a direct incentive to deny inmates access to programs and activities that improve their chances at re-integrating into society and avoiding re-offending. Guards are also the ones who report disciplinary issues, which can directly affect a prisoner’s chance at parole<sup>16</sup>. Again the people with the power also often have a direct financial interest in being unduly harsh and refusing to reward (and thus encourage) good behavior on the part of prisoners. This prevents rehabilitation and increases prison violence.

In addition to incentives to prevent rehabilitation (and thus increase crime), private prisons also participate very actively in lobbying for harsher laws and longer prison sentences for those who are convicted. The private prison industry spends millions of dollars lobbying Federal, State, and local governments to implement mandatory minimum sentencing laws and other measures designed to put more people in prison for longer<sup>17</sup>.

Practically speaking the only thing private prisons could have going for them is the fact that they do their jobs efficiently and well, but even that isn’t true. Low staff pay compared to public prisons and minimal training lead to incredibly high turnover rates, which in turn decreases the competency of the average guard and the safety of the prison<sup>18</sup>. Escape attempts are more common and successful, and assaults on both guards and other prisoners are more frequent<sup>19</sup>. There isn’t even clear evidence that they provide this shoddy service any cheaper than state prisons do, meaning they

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<sup>16</sup> <http://www.inthepublicinterest.org/sites/default/files/NCCD%20prison-bed-profiteers.pdf>

<sup>17</sup> [http://www.justicepolicy.org/uploads/justicepolicy/documents/gaming\\_the\\_system.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/gaming_the_system.pdf)

<sup>18</sup> [http://www.privateci.org/private\\_pics/NewHampshireRiskAssessment.pdf](http://www.privateci.org/private_pics/NewHampshireRiskAssessment.pdf)

<sup>19</sup> [http://www.bop.gov/resources/research\\_projects/published\\_reports/pub\\_vs\\_priv/camp\\_daggett.pdf](http://www.bop.gov/resources/research_projects/published_reports/pub_vs_priv/camp_daggett.pdf)



don't save the government any appreciable money<sup>20</sup>. In the few instances where some savings are seen they're almost entirely explained by the fact that private prisons can choose not to accept prisoners with high medical costs, sending them to public prisons instead. This practice deceptively lowers the costs for private prisons and raises them for the public sector resulting in no net benefit in terms of cost<sup>21</sup>.

## CON

The Pro is going to spend a lot of time telling you the system's in bad shape, but they're ignoring about the significant economic benefits private prisons bring and they don't realize how much good the private sector can do if we properly reform it.

First of all, private prisons do save money. We'll contend that they do deliver services more cheaply - cutting costs by up to 12% in the short term and significantly more in the long term<sup>22</sup>. But even if you don't accept that, the presence of private prisons has a significant effect on the system as a whole. By introducing competition into the prison system, both public and private prisons need to up their levels of efficiency to make sure they can compete and keep their jobs. States with private prisons have seen much more cost efficient work in both the public and private systems saving taxpayers millions of dollars<sup>23</sup>. Every dollar we save on prisons is another dollar that can go to the kinds of social programs and education that prevent people from turning to crime in the first place. Saving money here directly equates to preventing crime and saving lives, and that makes it the single most important issue today.

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<sup>20</sup>[http://www.bop.gov/resources/research\\_projects/published\\_reports/pub\\_vs\\_priv/cnanelson.pdf](http://www.bop.gov/resources/research_projects/published_reports/pub_vs_priv/cnanelson.pdf)

<sup>21</sup>[http://www.nytimes.com/2011/05/19/us/19prisons.html?pagewanted=all&\\_r=1&\\_hpid=hp\\_tech&\\_hpt=hp\\_tech](http://www.nytimes.com/2011/05/19/us/19prisons.html?pagewanted=all&_r=1&_hpid=hp_tech&_hpt=hp_tech)

<sup>22</sup><http://fulltextreports.com/2013/05/14/cost-analysis-of-public-and-contractor-operated-prisons/>

<sup>23</sup><http://www.independent.org/newsroom/article.asp?id=1411>

In addition to making operations more efficient across the board, private prisons also free up bond money for cities and states. This part's a bit complicated, but stick with me. If a state needs to build a new prison it's got to get a bunch of cash up front to pay for the construction costs. The way that most states and counties do this is with bond measures - they essentially take out loans. However, there's a limit to how much money people and banks will loan a government at any given time, so if the county has to borrow money for a prison it may not also be able to borrow money to repair its roads or build a new school. Private prison companies take on all of the initial costs of building the prison and then roll it into the long term contract they make with the government. That means the government doesn't have to come up with a bunch of money all at once, and they can use their borrowing ability for other necessary projects<sup>24</sup>. Additionally, private prisons pay property taxes to their local communities, unlike public prisons, which provides yet another source of income for cities in need.

Perhaps the most important reason not to ban private prisons is that if you ban them then you lose the chance to reform them and harness the power of the private sector for everyone's benefit. There's a fairly easy reform that would solve the vast majority of the problems with private prisons while still giving us the economic benefits they provide. We just need to pay them based on outcomes, rather than purely based on the number of prisoners they house. There are a number of different ways to do this, but the fundamental idea is sometimes referred to as Private Prison Rehabilitation Credits<sup>25</sup>. Essentially you make a sizable portion of the prison's potential profit contingent on the success of rehabilitation. Every prisoner that stays out of trouble after release is worth a certain amount of money to the prison. For each year that an inmate stays clear of the law the prison company gets a payment from the state. As long as the total potential value of that

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<sup>24</sup> <http://azcapitoltimes.com/news/2012/03/30/private-prisons-are-efficient-cost-effective/>

<sup>25</sup> <http://www.nyulawreview.org/sites/default/files/pdf/NYULawReview-89-1-Davilmar.pdf>

payment is more than what the prison would get from housing that prisoner if they reoffended and came back, the prison will have a financial incentive to rehabilitate them. This allows the ingenuity that comes from the private sector to really take off. Private prisons would have an incentive to invest money and time into new innovative treatment programs, and to make sure those programs actually work (since they lose potential money if the prisoner goes back to jail later on). This kind of a profit motive is unique to the private sector and it's an opportunity we would foreclose if we banned private prisons altogether, the way the Pro wants to. There are some very serious problems with our prison system, but they're not there because we're including the private sector, they're there because we're using the profit motive the wrong way - voting Con is the only way to turn that around.



## **Research Sources**

### **PRO**

Well Sourced Analysis of Private Prison "Occupancy Requirements" and their effects

<http://www.inthepublicinterest.org/sites/default/files/Criminal-Lockup%20Quota-Report.pdf>

Overview of Problems with Private Prisons

[http://sentencingproject.org/doc/publications/inc\\_Dollars\\_and\\_Detainees.pdf](http://sentencingproject.org/doc/publications/inc_Dollars_and_Detainees.pdf)

Analysis of Costs in Ohio For-Profit Prisons

<http://www.inthepublicinterest.org/sites/default/files/CellsForSale2011.pdf>

Bureau of Prisons Analysis of Taft Private Prison in California - Concludes that Private Prison Quality is inferior to Public Prison Quality

[http://www.bop.gov/resources/research\\_projects/published\\_reports/pub\\_vs\\_priv/orelappin2005.pdf](http://www.bop.gov/resources/research_projects/published_reports/pub_vs_priv/orelappin2005.pdf)

Bureau of Prisons Breakdown of Comparative Costs in the California Private Prison System - Shows Minimal Difference between Public and Private Costs.

[http://www.bop.gov/resources/research\\_projects/published\\_reports/pub\\_vs\\_priv/cnanelson.pdf](http://www.bop.gov/resources/research_projects/published_reports/pub_vs_priv/cnanelson.pdf)

### **CON**

Study from Temple University Arguing that Private Prisons Save Money

<http://fulltextreports.com/2013/05/14/cost-analysis-of-public-and-contractor-operated-prisons/>

Paper from Vanderbilt Law Arguing that Private Prisons Reduce Aggregate Cost Through Competition

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=441007](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=441007)

NYU Law Review Paper Advocating Reform of Private Prisons via Private Prisoner Rehabilitation Tax Credits

<http://www.nyulawreview.org/sites/default/files/pdf/NYULawReview-89-1-Davilmar.pdf>

Emory Law Review Article Arguing that Private Prisons can have Significant Benefits With Proper Performance Metrics

[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2336155](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2336155)

Article from Journal of Offender Rehabilitation about the Rehabilitative Potential of Private Prisons

[http://www.academia.edu/640575/Strange\\_Bedfellows\\_Private\\_Prisons\\_and\\_Reaffirming\\_Rehabilitation](http://www.academia.edu/640575/Strange_Bedfellows_Private_Prisons_and_Reaffirming_Rehabilitation)



